



Washington State  
Department of Health  
Board of Osteopathic Medicine and Surgery  
Meeting Minutes  
September 16, 2005

The meeting of the Washington State Board of Osteopathic Medicine and Surgery was called to order by Daniel Dugaw, DO, Chair, at 9:00 a.m. The meeting was held at: St. Francis Hospital, 34515 9<sup>th</sup> Avenue South, Board Room, Federal Way, Washington 98003.

Board Members Present: Daniel Dugaw, DO, Chair  
Larry Smith, DO, Vice-Chair  
Thomas Shelton, DO  
William Gant, Public Member

Staff Present: Blake Maresh, Executive Director  
Arlene Robertson, Program Manager  
Melissa Burke-Cain, Assistant Attorney General  
Maryella Jansen, Deputy Executive Director  
Lisa Noonan, Program Manager  
Judy Young, Staff Attorney  
Karen Jensen, Staff Attorney  
Karen Maasjo, Administrative Staff

Public Present: Drew Garcia, Physician Assistant

Open Session

1. Call to Order
  - 1.1 Approval of Agenda  
The agenda was approved as submitted.
  - 1.2 Approval of Minutes
    - 1.2.1 June 3, 2005 meeting minutes  
The June 3, 2005 meeting minutes were approved as submitted.
    - 1.2.2 August 12, 2005 conference call minutes  
The August 12, 2005 conference call minutes were approved as submitted.

2. Settlement Presentations  
Thomas R. Cooke, DO, Docket No. 04-12-A-10270P, Stipulated Findings of Fact, Conclusions of Law, and Agreed Order

Judy Young, Staff Attorney, presented the proposed Agreed Order. Deliberations were held in Executive Session. The respondent will be advised of the Board's decision by mail.

3. Disciplinary Issues
  - 3.1. Disciplinary Process Review - Sanctions  
Karen Jensen, Staff Attorney

Background information for the Board's current process is included in the following documents:

- 3.1.1 Disciplinary Guidelines (abbreviated version)
- 3.1.2 Case Disposition Guidelines
- 3.1.3 Board Worksheet

#### ISSUE

Ms. Jensen presented a summary of issues that the Disciplinary Process Review Sanctions Subcommittee has been reviewing pertaining to disciplinary sanctions. The Subcommittee is trying to identify similarities between the professions that might apply to disciplinary authorities reaching more consistent sanctions in all professions. Ms. Jensen indicated that consistent sanctioning among professions was an issue that the Legislature had included in past proposed legislation.

#### ACTION

The Board expressed concern about disciplinary sanctions remaining discretionary versus mandatory. It was noted that guidelines often tend to become rules.

The disciplinary sanctioning process needs to have a wide range of flexibility. The disciplinary process already includes several levels of consideration before a final action occurs. Records, statements and other evidence are gathered during the investigative phase, a board member reviews the records, when an action is proposed a staff attorney evaluates the case, an expert often also reviews the records and renders their view of the actions or care provided, and the prosecuting assistant attorney general does another review prior to signing the charges. Cases are not decided until a significant amount of thought has occurred.

Dictating specific sanctions may not leave sufficient flexibility to take action appropriate to the level of health care provided, i.e., physician responsibility versus a nursing assistant, or allow for settlement negotiations.

The Board is interested in reviewing further recommendations from the Sanctions Subcommittee.

#### 4. Rules

##### 4.1 Review pending rules

##### 4.1.1 Examination rules - WAC 246-853-020 & WAC 246-853-025

##### 4.1.1.1 CONVEX background information

###### ISSUE

The current rules allow the Board to use the SPEX examination for testing competency of applicants that have been out of practice for a number of years or as a competency evaluation tool in a disciplinary case. The Board is also interested in replacing the current essay examination that is given to applicants to meet the osteopathic principles and practice examination requirement. The National Board of Osteopathic Medical Examiners (NBOME) has developed an osteopathic examination (CONVEX-USA) that is intended to be given for these purposes. Another examination would provide another option to the SPEX and have a validated examination for the osteopathic principles and practice subject area.

###### ACTION

Ms. Robertson indicated that NBOME had not answered the questions about cost and setting up a contract. The Board also expressed interest in reviewing a complete exam, not just the sample questions that were provided. The matter was table pending receipt of the additional information.

##### 4.1.2 Retired Active Status

###### ISSUE

Several years ago the Board had received requests to implement the retired active status.

###### ACTION

The Board noted that the current renewal fee was less than that for the retired status license. The Board requested examples from other professions to review

before making a final decision whether to proceed with the rules process.

- 4.2 Rules in progress for filing CR102 for hearing
  - 4.2.1 Pain Management rules (osteopathic physician and physician assistant)
  - 4.2.2 Osteopathic physician assistant supervision and prescribing privileges

ISSUE

Ms. Robertson reported that the Significant Legislative Analysis and Small Business Economic Impact Statements related to these rules are in the final stages. It is anticipated the CR102s will be filed for hearings early in 2006.

ACTION

No further action was needed at this time.

- 5. Practice Issues
  - 5.1 Discuss patient safety initiatives that could be pursued by the Department of Health. (Standing Agenda Item)
    - 5.1.1 Annual Meeting Focuses on Patient Safety Issues - Newsline, Federation of State Medical Boards of the United States, Inc.

ISSUE

As discussed at the previous meeting, the Department will be focusing on patient safety issues and initiatives in the coming months. Additional information was provided from the Federation of State Medical Boards annual meeting.

Mr. Maresh reported on the study being conducted on non-hospital based surgery. The study relates to all professions whose scope of practice permits them to perform surgery. The study commenced after the Medical Quality Assurance Commission (MQAC) research found that it did not have authority to regulate the practitioner's office. The Department also recognized that this issue also applied to several other professions.

Several public workgroups have been conducted and comments taken from impacted organizations and professionals. Mr. Maresh indicated that he is finalizing the report. It will be forwarded to the Secretary's office for approval before being released to the public.

## ACTION

The board members requested that they receive a copy of the report.

### 6. Program Manager Reports

#### 6.1 Budget Report - May 2005

Ms. Robertson shared the May budget report. It was noted that the end of biennium report had not been received. It is anticipated it will be available sometime in October. Since the balance had grown significantly over the amount allocated, the Department reduced the renewal fees. The balance will be reduced to approximately 20% of the Board's allocated budget. The adjusted fees went into affect on July 1<sup>st</sup>.

### 7. Executive Director Reports

Mr. Maresh touched briefly on the complaint processing issues that have had a significant impact on the professions that are regulated by a Board or Commission.

Mr. Maresh indicated that the Board/Commission meeting is scheduled for September 23<sup>rd</sup> in Kent. Mr. Gant indicated that he had signed up to attend.

### 8. Set 2006 meeting dates.

The following meeting dates were scheduled for 2006:

January 20, 2006

March 31, 2006

May 19, 2006

September 15, 2006

November 17, 2006

## Closed Session

### 9. Court Decision Discussion relative to Complaint Reviews

9.1 Court of Appeals Division I -Client A & B, P.T. PHD, Appellants VS Jeffrey Yoshinaka, et al, Respondent (No. 54291-5-I)

9.2 Draft FAQs - Regarding Implementation of Client A & B vs Yoshinaka, et al.

#### ISSUE

Ms. Jensen, who had been involved in the beginning of the lawsuit at the Attorney General's Office is now working with Health Professions in her capacity as a staff attorney, provided updated information since the Board had been informed of the court decision on August 12<sup>th</sup>. The recommendations from the AAG were reviewed.

10. Discuss Policy Changes Impacted by the Court Decision
  - 10.1 OP95-01 Review of Complaints By the Reviewing Board Member - Review for revisions
  - 10.2 OP95-02 Closure of Investigated Cases - Review for revisions
  - 10.3 OP95-10 Review of Investigations by Reviewing Board Member Recommending Disciplinary Action or Further Investigation - Review for revisions
  - 10.4 OP97-26 Closure of Below Threshold Reports/No jurisdiction reports - Review for revisions

ISSUE

To comply with the court ruling, the Board will need to identify how new complaints to be reviewed and approved.

ACTION

Since the number of complaints coming in are small and sporadic, the Board determined that complaints would be reviewed by three panel members at conference calls between meetings. Complaints will be redacted and copies sent to all three participants. One board member will sign off on the original complaints and return them to staff. Complaints that can be brought to Board meetings will be redacted and sent to all members, any board member present can sign for those once a decision has been made. The board member that signs off on a complaint may not be the reviewing board member upon completion of the investigation. This process will be used for a few months and reevaluated to see if changes are needed.

11. Investigative Authorizations

ACTION

The Board reviewed 94 complaints. Six (6) cases were closed below threshold.

12. Disciplinary Case Reviews - Reviewing Board Member Reports

CASE NUMBER

CASE DISPOSITION

2004-07-00120P	Closed no cause for action; evidence does not support a violation.
2004-09-00020P	Closed no cause for action; evidence does not support a violation.
2004-11-00020P	Closed no cause for action; evidence does not support a violation.
2004-11-00100P	Closed no cause for action; evidence does not support a violation.
2004-12-00090P	Forward to Legal for Statement of Allegations/Stipulation to Informal Disposition

CLOSED BELOW THRESHOLD SINCE 6/3/05

2005-06-0005OP  
2005-06-0007OP  
2005-06-0019OA  
2005-07-0001OP  
2005-07-0002OP  
2005-07-0003OP  
2005-07-0007OP

CLOSED BELOW THRESHOLD on 9/16/05

2005-06-0004OP  
2005-08-0002OP  
2005-08-0004OP  
2005-08-0014OP  
2005-09-0005OP  
2005-09-0008OP

12.1 Statement of Allegations/Stipulation to Informal  
Disposition presentations  
Judy Young, Staff Attorney, presented Statement of  
Allegations and Summary of Evidence, Docket No. 04-12-  
A-1025OP. The Board deliberated in Executive Session.  
The respondent will be advised of the Board's decision  
by mail. As the reviewing board member, Dr. Dugaw  
recused himself from the proceedings.

13. Compliance Issues  
There were no compliance issues for review.

14. Application Review  
The Board reviewed and approved three (3) osteopathic  
physician and two (2) osteopathic physician assistant  
exception applications.

The meeting was adjourned at 2:30 p.m.

Respectfully Submitted

Arlene A. Robertson  
Program Manager

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